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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,) No. CR 06-0692 PJH
13 Plaintiff,)
14 v.) [PROPOSED] ORDER EXCLUDING
15 IL UNG KIM, et al.,) TIME UNDER THE SPEEDY TRIAL ACT
16 Defendants.)

19 On February 28, 2007, counsel for Il Ung Kim, Eric Grannon and Nhien T. Vuong,
20 counsel for Gary Swanson, Bill Edlund and John F. McLean, and the United States Department
21 of Justice, represented by Niall E. Lynch and Charles P. Reichmann, appeared before Judge
22 Phyllis J. Hamilton on defendants' separate motions for bills of particulars and for trial setting.
23 The Court scheduled the jury trial to begin on September 10, 2007. Counsel for Swanson and the
24 government requested an exclusion of time under the Speedy Trial Act, from February 28, 2007
25 to September 10, 2007. Counsel for Kim requested a trial within the time established under the
26 Speedy Trial Act and objected to any exclusion of time. The Court denied Kim's request for an
27 earlier trial date and overruled Kim's objection to exclusion of time under the Speedy Trial Act.

ORDER EXCLUDING TIME
UNDER SPEEDY TRIAL ACT

1 The Court ordered the exclusion of time under the Speedy Trial Act from February 28, 2007 to
2 September 10, 2007 based on the following reasons:

- 3 1. The government moved for an exclusion of time because of the complexity of the
4 case, due to the number of defendants, the nature of the prosecution, and the
5 existence of novel questions of fact and law such that it is “unreasonable to expect
6 adequate preparation for pretrial proceedings” within the time limits established
7 by the Speedy Trial Act. *See* 18 U.S.C. § 3161(h)(8)(A) and (B)(ii) and B(iv).
- 8 2. The discovery in this case is voluminous and includes millions of pages of
9 documents and 280 gigabits of electronic discovery. Additionally, approximately
10 1,150 boxes of documents have been made available to the defendants by the
11 government as part of pretrial discovery. Given the large volume of discovery,
12 failure to exclude time would unreasonably deny counsel for Defendant Swanson
13 reasonable time necessary for effective preparation, taking into account the
14 exercise of due diligence. *See* 18 U.S.C. § 3161(h)(8)(A) and (B)(ii) and B(iv).
- 15 3. There are several corporate co-conspirators and individual conspirators-potential
16 witnesses that reside outside the United States. Defendant Swanson anticipates
17 the need to seek discovery from these co-conspirators and may need to take
18 depositions of potential witnesses outside the United States to secure their
19 testimony because they may not be compelled to appear at trial. Further,
20 Defendant Swanson anticipates issuing subpoenae duces tecum to third parties,
21 which may add additional complexity to this proceeding. *See* 18 U.S.C. §
22 3161(h)(8)(B)(ii) and B(iv).
- 23 4. Defendant Swanson has requested an exclusion of time under the Speedy Trial
24 Act on the basis of the complexity of the case and volume of discovery. *See* 18
25 U.S.C. § 3161(h)(8)(A) and (B)(ii) and B(iv). Despite Defendant Kim’s objection
26 to Swanson’s and the government’s requests for an exclusion of time, a
27 reasonable period of delay is warranted when a defendant is joined for trial with a
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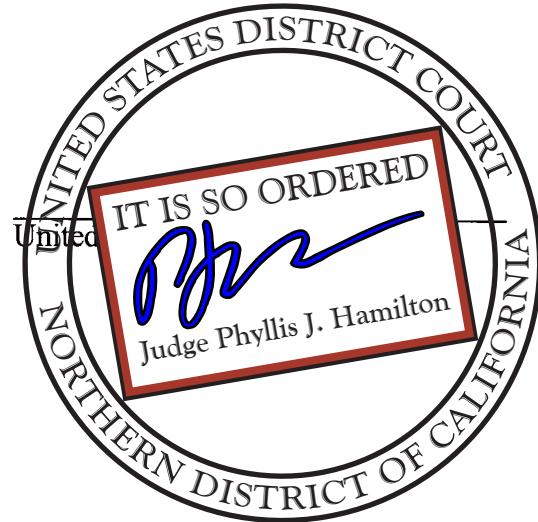
1 co-defendant as to whom the time for trial has not run and no motion for
2 severance has been granted. *See* 18 U.S.C. § 3161(h)(7).

3 The Court finds that the failure to grant the requested continuance would unreasonably
4 deny counsel for Defendant Swanson reasonable time necessary for effective preparation, taking
5 into account the exercise of due diligence. Furthermore, the Court finds that the ends of justice
6 would be served by excluding the proposed time period under the Speedy Trial Act. These ends
7 outweigh the best interests of the public and the defendants in a speedy trial. *See* 18 U.S.C. §
8 3161(h)(8)(A).

9 For the reasons stated, the Court finds that the time period from February 28, 2007 to
10 September 10, 2007 should be excluded from the calculation of time under the Speedy Trial Act,
11 18 U.S.C. § 3161(h)(8)(A).

12 IT IS SO ORDERED:

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14 Dated: 3/8/07



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ORDER EXCLUDING TIME
UNDER SPEEDY TRIAL ACT

CERTIFICATE OF SERVICE

I certify under penalty of perjury that I filed this document electronically on March 7, 2007, through the Electronic Case Filing portal of the U.S. District Court, Northern District of California. Under N.D. Cal. Local Rule General Order 45, all counsel appearing in this matter will receive an electronic copy of this filing.

Dated: March 7, 2006

Niall E. Lynch